

SERVICE DATE – JULY 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-876X

R.J. CORMAN EQUIPMENT COMPANY, LLC—ABANDONMENT EXEMPTION—IN  
JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

STB Docket No. AB-875X

R.J. CORMAN RAILROAD COMPANY/BARDSTOWN LINE—DISCONTINUANCE OF  
SERVICE EXEMPTION—IN JOHNSON, MAGOFFIN AND BREATHITT COUNTIES, KY

Decided: July 5, 2006

By decision and notice of interim trail use or abandonment (NITU) served on December 23, 2004, the Board granted R.J. Corman Equipment Company, LLC (RJCE) and R.J. Corman Railroad Company/Bardstown Line (RJCR) (collectively, Corman) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903. RJCE sought to abandon, and RJCR sought to discontinue service over, a line of railroad known as the Dawkins Line, extending from milepost 0.05 at Dawkins, KY, to the end of the track at milepost 36.13 near Evanston, KY, a distance of approximately 36.08 miles in Johnson, Magoffin and Breathitt Counties, KY. The exemption was granted subject to public use, environmental, and standard employee protective conditions, and the Board authorized a 180-day period for Judge Executive Roger “Tucker” Daniel and the Johnson County Fiscal Court, Judge Executive Bill May and the Magoffin County Fiscal Court, and Judge Executive Lewis Warrix and the Breathitt County Fiscal Court (collectively, the Counties), to negotiate an interim trail use/rail banking agreement with RJCE under the National Trails System Act, 16 U.S.C. 1247(d). The negotiating period under the NITU was extended by decisions served on June 30, 2005, and January 5, 2006, with the latest extension expiring on June 20, 2006.

On June 26, 2006, Corman filed a request to further extend the NITU negotiating period. Corman states that it and the Big Sandy Area Development District (Big Sandy ADD)<sup>1</sup> continue to pursue an interim trail use agreement. It adds, however, that the agency must obtain funding to perform initial feasibility studies and that Big Sandy ADD has asked Corman to request an extension of time. Corman states that it is agreeable to the extension and joins in the request that

---

<sup>1</sup> By letter filed on January 4, 2006, Corman explained that the Counties had arranged for Big Sandy ADD, an organization of local governmental officials and citizens, to pursue this rails-to-trails project on their behalf. They added that, if the parties are able to reach a trail use agreement, the Counties will acquire and develop the right-of-way and assume financial responsibility for the trail.

the deadline for entering into a trail use agreement, and for filing a notice of consummation, be extended for an additional 180 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to December 17, 2006. The extension of the NITU negotiating period will have the effect of extending the deadline for filing a notice of consummation until February 15, 2007 (60 days after the scheduled expiration of the NITU negotiating period).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Corman's request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until December 17, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary